

REMARKS

Reconsideration and withdrawal of the rejections of the pending claims are respectfully requested in view of the amendments and remarks herein, which place the application in condition for allowance.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 25, 27-32, 34-44, and 47 are now pending in the present application. Claims 25, 34, 43, and 44 have been amended. Claim 48 has been cancelled.

Claims 25, 34, 43, and 44 have been amended solely to expedite prosecution. Support for the amendments to the claims can be found in the specification and claims as originally filed (see, e.g., paragraphs 0182 and 0183 of the application as published).

No new matter has been introduced.

It is respectfully submitted that the claims, herewith and as originally presented, were in full compliance with the requirements of 35 U.S.C. § 112. It is respectfully submitted that the amendments of the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112, but rather that these amendments are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

Applicants note with appreciation that claims 44 and 48 have been allowed. The Office Action indicates on pages 1 and 6 that claim 43 is also allowed; however, on page 4 of the Action, the Examiner states that claim 43 remains rejected under 35 U.S.C. § 112, first paragraph. Clarification is requested.

The issues raised by the Examiner in the Office Action are addressed below in the order they appear in the prior Action.

II. THE REJECTIONS UNDER 35 U.S.C. § 112, FIRST PARAGRAPH (WRITTEN DESCRIPTION) ARE OVERCOME

Claims 25, 27-32, 34-42, and 47 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The claims are alleged to contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed,

had possession of the claimed invention. Applicants respectfully traverse in view of the claims as amended.

With respect to claim 25 (and claims dependent thereon), the Examiner contends there is no clear support for inserting a tumor-specific promoter anywhere but in place of the deleted nucleotides 324 to 488 and that it is unclear to which nucleotides the nucleotides 324 to 488 correspond. In order to expedite prosecution, as discussed below regarding the § 112, second paragraph rejection, claims 25 and 34 have been amended to recite that the deletion of nucleotides 324 to 488 are nucleotides 324 to 488 of the adenoviral subtype 5 genome “from a pAdEasy-1 vector”.

With respect to claim 43, the Examiner contends that the specification does not direct one of skill in the art to prepare and use a conditionally replicative Ad5 vector with a chimeric Ad5/CAd2 fiber and E1A promoter replaced with one of the recited promoters. While Applicants do not agree with the Examiner’s contention that the exemplified suitable promoters constitute a mere “laundry list disclosure of every possible moiety”, to expedite prosecution, claim 43 has been amended to recite that the promoter region is from a gene encoding CXCR4 or survivin, which the Examiner specifically acknowledges is explicitly taught by the specification (Office Action, page 5).

Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, first paragraph are respectfully requested.

III. THE REJECTIONS UNDER 35 U.S.C. § 112, SECOND PARAGRAPH ARE OVERCOME

Claims 25, 27-32, 34-42, and 47 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

The Examiner alleges that it is unclear to which nucleotides the nucleotides 324 to 488 refer. In order to expedite prosecution of the pending claims, claims 25 and 34 have been amended to recite that the deletion of nucleotides 324 to 488 are nucleotides 324 to 488 of the adenoviral subtype 5 genome “from a pAdEasy-1 vector”.

Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, second paragraph are respectfully requested.

REQUEST FOR INTERVIEW

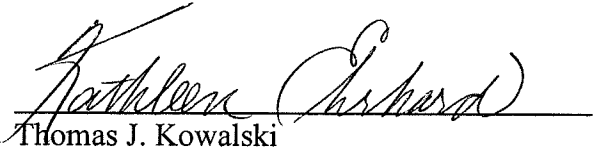
If any issue remains as an impediment to allowance, an interview with the Examiner is respectfully requested, and the Examiner is additionally requested to contact the undersigned to arrange a mutually convenient time and manner for such an interview.

CONCLUSION

For the reasons stated above, Applicants respectfully request a favorable reconsideration of the application, reconsideration and withdrawal of the rejections of the pending claims, and prompt issuance of a Notice of Allowance. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By:



Thomas J. Kowalski

Reg. No. 32,147

Deborah L. Lu

Reg. No. 50,940

Kathleen N. Ehrhard

Reg. No. 55,144

Telephone: (212) 588-0800

Facsimile: (212) 588-0500